

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 912 of 1999

in

SPECIAL CIVIL APPLICATION No 3048 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed :
to see the judgements? 2. To be referred to the
Reporter or not? : 3. Whether Their Lordships wish to
see the fair copy : of the judgement? 4. Whether this
case involves a substantial question : of law as to the
interpretation of the Constitution of India, 1950 of any
Order made thereunder? 5. Whether it is to be
circulated to the Civil Judge? :

-----BINOY

NAIR Versus MP SHAH MEDICAL COLLEGE

-----MR

DC DAVE for Appellants MR JR NANAVATI for Respondent No.

2 NOTICE SERVED BY DS for Respondent No. 3

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA Date of decision: 08/10/1999

ORAL JUDGEMENT

Per Thakker, Actg. C.J.

This appeal is filed against the judgment and order dated
June 12, 1999 passed by the learned Single Judge in
Special Civil Application No. 3048 of 1999 .
June 12, 1999.

Appellants were the original petitioners. They approached this Court for appropriate writ, direction or order directing the respondent authorities not to give admission to those students who have already been granted admission in degree or diploma and who have given up earlier course which had already been undertaken by them.

Case of the petitioners was that they had cleared their final MBBS examination in June 1998. They had completed one year internship in June 1999. On completion of final MBBS examination and internship, they became eligible to be admitted to post graduate course- degree as well as diploma. Respondent No.2 University has framed rules for admission to post graduate centre for the faculty of medicine.

Rule 2 is material and relevant for the purpose of controversy raised in the petition as well as in the LPA. It requires to be quoted in extenso:

"2.(i) Those who have passed MBBS examination of Saurashtra University are eligible for admission to Post Graduate Degree/ Diploma courses under the rules framed by this University from time to time.

(ii) Candidates who have passed their final MBBS examination at more than three attempts will not be eligible for admission to Post Graduate courses.

(iii) Candidates should not be of more than four years standing after passing 3rd MBBS examination and one year internship on the day of their regular admission. However, if any degree registration remains unutilised after filling in the sanctioned posts of first year resident, this may be offered to a candidate with not more than seven years standing if he/she has put in at least four years service in Government, Semi-Government or Government aided hospital located in rural areas." (emphasis supplied).

It was submitted before the learned Single Judge that on completion of final MBBS examination and of one year

internship, a student becomes eligible for admission to post graduate study under the above rule. According to the petitioner, however, four conditions must be fulfilled before such admission can be granted to an eligible student;:

- (i) he must have passed MBBS examination from Saurashtra University;
- (ii) he must have passed the said examination within three trials;
- (iii) an application for admission to post graduate degree/diploma course must have been made within four years from passing of third MBBS examination; and
- (iv) he must have completed internship of one year after passing of final MBBS examination .

It was submitted on behalf of the petitioners before the learned Single Judge that once the above requisites have been complied with and is admitted to degree/ diploma course at post graduate level, the rule gets exhausted. Thereafter, it is not open to the respondent University to permit such student to change course by permitting him to go to other course. Since respondent-University wanted to extend such benefit of change from one degree/ diploma course to another degree/diploma course, who had already got admission in one degree/diploma course, the petitioners approached this Court contending that such action of respondent No.2 University was illegal, contrary to law and unlawful.

The learned Single Judge before whom the matter was placed heard the learned counsel for the parties. It appears that no affidavit was filed either by the University or by the State Government. The learned Single Judge observed that the contention of the learned counsel for the petitioners was that the candidates who were found eligible and admitted and opted for post graduate degree course in one course should not be considered for other course and such action would be contrary to rules. The learned Single Judge then noted that learned counsel for the petitioners was called upon by him to show any provision which either expressly or impliedly prevented such action, but the counsel was unable to point out such prohibition except Rule 2 (iii).

The learned Single Judge then proceeded to state:

" I have gone through the aforesaid rule and I find that this rule on the contrary makes it permissible for the candidates passing the MBBS course to seek admission in the Post Graduate Courses within a period of four years standing after passing the MBBS examination and one year internship on the day of their regular admission. The candidates who are alleged to be considered this year have not crossed this limit of four years by now and therefore, I find that in absence of any express ban in the rules relating to admission, such candidates even if they have given up admission which they might have got last year, cannot be deprived of consideration this year merely because they have given up or abandoned the course for the reasons more than one. There is one more reason for me to take this view because I find that in certain cases, even if a candidate gets admission, he may not be in a position to prosecute the studies in a given year because of chill penury or the like reasons which may be beyond the control and comprehension of such candidates. It may be a matter of chance only that a candidate may or may not get admission in the net year and if he gives up admission in the past year and again it maybe a matter of chance that he may get any other speciality which maybe a speciality of his preference, but that by itself cannot be a ground to deny the right of consideration to such candidates if they are otherwise having a higher merit. In this view of the matter, I do not find that the present petitioners have any subsisting legal right to seek a writ of mandamus and/or a writ, order or direction against the respondents that such candidates may not be considered this year and to compete for the seats in various specialities which are available this year."

That order is challenged by the appellants in this appeal. On July 1, 1999, the Division Bench issued Notice as to admission as well as final hearing returnable on July 8, 1999. Direct service was permitted and the respondents were served. The matter was, thereafter adjourned from time to time. On September 23, 1999, when the matter was called out for hearing, on

behalf of respondent No.2, time was sought for filing an affidavit. Learned counsel for the appellants, therefore, prayed for interim relief which was objected to by the respondents. We, however, granted interim relief by passing the following order (in Civil Application No. 6089 of 1999):

"On behalf of the Saurashtra University, opponent

No.2, time is sought for filing affidavit. It was stated that no affidavit was filed before the learned Single judge as petition was summarily dismissed. It was stated by the learned advocate for the applicants that petition was summarily dismissed after issuance of notice and after hearing the University. Be that as it may be, the order passed by the learned Single judge is dated June 22, 1999. LPA was filed on June 28, 1999. On July 1, 1999, when the matter was placed before the Division Bench, notice was issued "as to admission as well as final hearing returnable on July 8, 1999". Direct service was permitted. Thereafter, the matter was adjourned from time to time. Today, we are on September 23, 1999. It was stated that the University intends to file an affidavit in reply. Learned advocate for the applicants stated that admission process is to start from September 25, 1999. As notice was issued in LPA "as to admission as well as final hearing" as early as on July 1, 1999, and even today, time is sought for filing affidavit, in our opinion, it would be in the interest of justice to grant ad interim relief till then. S.O. to October 6, 1999 as requested on behalf of opponent No.2. By way of ad-interim relief, it is directed that no admission will be given on the basis of the order passed by the learned Single Judge till then. Direct service permitted."

Today, we have heard the parties on the main matter.

Mr. Dave, learned counsel for the appellant contended that the learned Single Judge has committed an error in law in interpreting the provisions of Rule 2. He submitted that proper interpretation of Rule 2 is that a student who is otherwise eligible and complies with conditions laid down therein would be eligible to get admission in post graduate course, degree or diploma. But once he avails of that chance and gets admission in one course, it is not open to him thereafter to change in

a subsequent year. Learned Single Judge by permitting such student to change the course , has not correctly interpreted Rule 2 . He also submitted that if the said rule is interpreted in a manner as interpreted by the learned Single Judge, it would be arbitrary and unreasonable . He also submitted that the learned Single Judge was not right in approaching the question and by observing that there was no express or implied ban against consideration of candidates who had got admission in past and had given up that course. According to the counsel, proper approach to the question would be that in the absence of such rule or express or implied interpretation, a student who was already admitted to one course should not be permitted to change that course in view of the fact that he has already availed of a chance which was available to him. He further submitted that if the interpretation of the learned Single Judge is upheld, a student may get admission in post graduate course, degree / diploma in the first year in "A" course. After completion of one year, he may opt for "B" course and prosecute that course for one year . Thereafter , if on the basis of merits, he would get admission, he may again go to "C" course. In the third year, and in the final year, he may opt "D" course. Such interpretation would neither be in the interest of student community nor in the larger interest of society. Unless compelled, the Court would not interpret rule in such a manner. He also stated that such jumping is not permitted in other Universities. He, therefore, submitted that the judgment of the learned Single Judge deserves to be set aside by allowing the appeal.

Though time was sought by the University , no affidavit is filed by the University. An affidavit is, however, filed by the Dean ,M.P.Shah Medical College Jamnagar, respondent No.1.

In paras 4 to 6, it was stated as under:

"4) At the outset, I say and submit that the Universities are autonomous bodies and they have right to frame their own rules to regulate the admission and therefore the order passed by the learned Single judge in Spl. civil application No. 3048/99 is justified and the judgment is passed in accordance with the rules framed by the Saurashtra University.

5) I further say and submit that even this

Honourable court (coram:K.G. Balakrishnan, C.J. and M.S.Shah,J.) by their order dated 19.11.1998 passed in LPA No. 898/98 in SCA No. 3067/98 held that all Universities are autonomous bodies and they have right to frame their own rules to regulate the admission. Under this circumstance, the order passed by the learned Single Judge is proper and legal and does not require any interference by this Honourable court. Copy of the said order passed by the Division Bench is annexed hereto and marked as Annexure I to this affidavit in reply.

- 6) I further state and submitted that no student is getting any weightage or special treatment during the admission whether he/she applies afresh or who has already been admitted. The student is considered only as per the merit and as per his/her position in the merit list."

In para 5, a reference was made to a decision of the learned Single Judge of this Court in SCA No. 3067 of 1998 decided on July 13, 1998 as confirmed by the Division Bench in LPA No. 898 of 1998 on November 19, 1998. We have been taken by the learned counsel for the respondents to both the decisions. It was not a case in which a student has opted for one subject, had prosecuted studies for some time and then he changed the course. It was held by this Court that the Universities are autonomous bodies and they have right to frame their own rules to regulate admissions. Interpreting the rules, the Division Bench held that a student who may be interested in one subject but may not opt that subject can be considered eligible in the next year or within the stipulated chances available to him under the rules in subsequent years to enable him to get course of his own choice. But in the instant case, the question is whether a student has already opted for post graduate degree/diploma course and has also prosecuted study for one year can be permitted to jump to another course. In our opinion, therefore, the ratio laid down in the cited case is of no assistance to the respondents.

The matter can be looked at from another angle also. If one reads clause (iii) of rule 2 closely, it is clear that it would not apply to a student who has already availed of a particular course and has prosecuted study for some time. Clause (iii) enacts that students should not be of more than four years' standing after passing

MBBS examination and one year internship on the day of their regular admission. In our opinion, the term "standing" must be interpreted by giving proper meaning to the said term. As observed by the Division Bench in the above case, a student may be interested in one course, say "A" course, but because of marks obtained by him, placement in merit list and non-availability of seats, he may not be able to get admission in that course and he may not opt for any other course, say "B" course but would like to "stand" so as to take chance in future under clause (iii) of Rule 2. He is aware, and knows that Rule 2 (iii) allows him to "stand" and he may be able to get admission to a course of his choice within a period of four years. In our opinion, such student can be said to be "standing". If in that "standing" capacity, in the second, third or fourth year, he gets a chance and admission in course of his choice, then, he may be admitted to that course. The only embargo which the rule making authority has put on such student is that he can avail of such chance latest in the fourth year. The interpretation that a student may be permitted to change or jump the course year after year, is neither contemplated nor permissible under clause (iii) of Rule 2. Learned Single Judge, in our opinion, therefore, has committed an error of law in interpreting the provisions of Rule 2 (iii) of the Rules and in holding that it is open to students to change course one after another, provided such action is taken within four years.

In our opinion, the judgment cited before us instead of supporting the respondents supports the appellants. Rule 6.4 and 6.5 which came to be interpreted in the above decision were as under :

"6.4 Candidates should not be of more than four years standing after passing the Third MBBS examination on the day of their regular admission to the first year residency." :

"6.5 If a candidate applies for any of the first year residency and does not accept the residency when offered in the subject of his final choice he will not be considered for any other residency in any subject in future. For this purpose, offer made at the time of interview will be considered final".

It was observed by the court that if a student has opted

for a particular course may be in the alternative i.e. second or third change, accepted admission and prosecuted study , he would not be permitted to change thereafter . In our opinion, if that is the legal position, the student who not only opts for a particular course but prosecutes study for one year, two years or three years, cannot be permitted to change the course. Such interpretation would not be in consonance with law and spirit of rules and such interpretation cannot be given by a court particularly when plain reading of rule 2 does not permit such jumping.

For the foregoing reasons, in our opinion, LPA deserves to be allowed and is accordingly allowed. The judgment and order passed by the learned Single Judge is hereby set aside. In the facts and circumstances of the case, there shall be no order as to costs.

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